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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

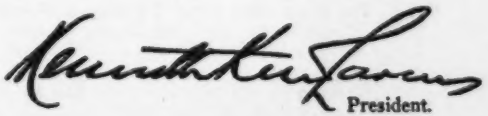
The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

Protecting the Name of a Corporation Whose Business is Restricted to a Single City or State

It is believed that the editorial begun in this issue of THE CORPORATION JOURNAL (on page 365), and to be completed in the April issue, will be read with much interest by members of the bar, to some of whom, perhaps, the thought will be new that in the case of a corporation intending to restrict its business activities to a single city or state it will be of advantage to such corporation, anticipating that it may perchance have occasion at some future time to bring suit to enjoin the use of a name similar to its own by a local concern doing business in the same city or state, if it is incorporated in a state other than that in which its business is to be conducted since the probabilities will be greater in that event that its action may be brought in a Federal rather than a state court, by virtue of diversity of citizenship, the advantage thereof being that the Federal courts are more ready, generally, to grant relief in such cases than are state courts.

Reciprocity

The indications are strong that when the 43 state legislatures that meet in regular session this year have adjourned, it will be found that numerous additions have been made to the list of states generally known as reciprocal states in connection with state inheritance taxes in the case of non-resident decedents whose estates include intangible personalty.



President.

THE CORPORATION JOURNAL

Edited by John H. Sears of the New York Bar

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost ($2) and thereafter, before mailing, each copy will be punched to fit the binder.

Contents for March

Better Protection for Foreign than for Domestic Purely Local Corporations

Reasons for incorporating in a foreign state rather than in the home state usually include smaller organization or annual franchise taxes, exemption of shareholders from inheritance taxes on their shares in the corporation, convenience of the foreign state law provisions, such as holding of stockholders and directors meetings outside of the state of incorporation, granting of certain powers, such as the holding of securities in other corporations, creating of voting trusts, etc. There is also the bringing and defending of suits in the United States Courts, sometimes considered an advantage, especially in labor disputes. This is the usual list. There may be added another consideration, in the case of corporations restricting their activities to purely local business to which attention has heretofore not been especially directed, namely—a larger measure of protection to the corporate title. This is a matter of constantly growing importance because of the good will factor involved in a widely advertised name and its effect on the goods or services furnished by the corporation, and also, in some instances, because of the sale of the corporation's own securities to the general public.

This greater protection to the name of a foreign corporation as compared to that afforded to a domestic corporation is brought about because of the greater possibility of recourse of a foreign corporation to the United States courts in instances not available to a domestic corporation, as when both the complainant and the defendant corporations are engaged in business of a local nature in the same state and each is incorporated under the laws of that state.

The United States courts are more liberal in their construction of what is entitled to protection from infringement and piracy than are State courts. For instance, they recognize, as State courts usually do not, that damage is done and judicial remedy should be afforded when there is use of a similar name by concerns other than those in direct competition with the complainant. The United States courts give full legal cognizance to the fact that a corporation may build a good will around a name indicating quality in such a way as to make it damaging to it to have the name used by others in any line of endeavor whether competitive or non-competitive.

A decision in point illustrating the attitude of the Federal courts is that of the United States Circuit Court of Appeals in British-American Tobacco Ltd. vs. British-American Cigar Stores Co., 211 Fed. 933 (C. C. A. 2d, 1914) wherein injunction was made permanent, although there was no actual competition between the two companies, the complainant selling tobacco at wholesale only, whereas the defendant sold tobacco at retail only. The court could find no "honest reason" for the appropriating by the younger company of "the name of the old and longer established company."

(To be concluded in the April issue)

Domestic Corporations

California.

Blue Sky Law. This is an action to enforce payment of certain promissory notes given in payment of stock in the respondent corporation. The Blue Sky Law of California provides that no subscription is valid and may be enforced unless 25 per cent thereof has been paid in in cash. Five separate subscriptions were made for all of which promissory notes to the extent of 75 per cent were given as well as so-called "myself notes" for the remaining 25 per cent. The "myself note" covering the first subscription was promptly paid and taken up. The California District Court of Appeal, Third District, holds this subscription good, and, reversing the court below, finds for the plaintiff corporation. All of the other "myself notes" were subsequently, at later dates, paid and taken up. As to the four accompanying 75 per cent subscription notes the court, holding the contract void, finds for the defendant subscriber saying that he was under no obligation to pay inasmuch as at the time of the subscription contract the necessary 25 per cent in cash had not been paid in. Renewal notes had been given and it was contended that as all of the 25 per cent "myself notes" had been eventually paid this giving and acceptance of the new notes constituted entering into new enforceable contracts and that the four notes were collectible. Imperial Live Stock & Mortgage Co. vs. Tracy, 272, P. 600. Fredericks & Hanna, of Los Angeles, and C. V. Anderson, of Bakersfield, for appellant. Dorsey & Campbell and Emmons & Aldrich, all of Bakersfield, for respondent.

Georgia.

On purchase of a corporation's assets including its good will the purchaser is entitled to use or assign the vendor's trade-name. In this case the National Biscuit Company purchased all of the assets of the Frank E. Block Company, long engaged in the manufacture and sale of candy and crackers featuring the word "Block" both on its products and its advertising. Several trade names, emphasizing the word "Block" were registered. Included among the purchased assets from the Block Company were the good will, trade-marks, copyrights and patents. Soon after the purchase the National Biscuit Company authorized one Morgan to procure a charter for a corporation to be known as the "Block Candy Company," agreeing to transfer to the corporation so organized certain of the purchased assets from the Block Company, including the good will. Steps were promptly taken by the Frank E. Block Company and others to enjoin Morgan and his associates from using the word "Block" in the name of the proposed new corporation. The Supreme Court of Georgia, reversing the judgment below, holds that the trade names or the use of the word "Block" were included in the transferred good will and had been transferred by sale to the National Biscuit Company for such use as it saw fit to put them to, includ-

ing the right to use the vendor's name and the essential parts or components of that name, and that having acquired this property right could sell and assign it to others for similar use. Morgan et al. vs. Frank E. Block Co. et al., 146 S. E. 19. Brandon & Hynds and Alston, Alston, Foster & Moise, all of Atlanta, for plaintiffs in error Colquitt & Conyers, of Atlanta, for defendants in error.

Kansas.

Domestic corporations maintaining offices in more than one county may be sued in any one of such counties. Kansas Revised Statutes Section 60-2518 provides for service of summons on a chief officer of a corporation or, if no one of such be found within the county, on a clerk or managing agent. The Kansas corporation here involved has its principal office in Lyon county, with a branch office in Shawnee county in charge of a manager, on whom process was served in an action brought in Shawnee county against the corporation. Revised Statutes Section 60-504 provides that an action against a corporation *may* be brought in the county in which it is situated, or has its principal office or place of business, or in which any of the principal officers thereof may reside or be summoned. The defendant, appearing specially, contended that there was no valid service and that the District Court of Shawnee county was without jurisdiction. The Supreme Court of Kansas holds otherwise, finding the service good, and says: "We are of opinion that when a domestic corporation maintains several offices in different counties within the state and where it transacts business in the several counties in which it has such local offices (as in this case), it is not necessary that suit against it be brought only in the county in which it claims its principal office." McLeod vs. Trusler Grain Co., 272 P. 119. W. S. Kretsinger, of Emporia, and Roland E. Boynton, of Topeka, for appellant. A. E. Crane, B. F. Messick, Jr., and A. Harry Crane, all of Topeka, for appellee.

Kentucky.

Corporation may borrow stock of another corporation to use as collateral for a loan. The president of a corporation, on account of the corporation, borrowed some shares in another corporation to be used as collateral security for a loan to be procured by his company. The loan of the stock was for one year, the consideration being $55 a month. The president owned all except four of the 6,000 shares of stock of his company. He sold the borrowed stock and used the proceeds for his individual purposes. Action is against the company for the value of the borrowed stock. Pending the action a receiver was appointed and was made a defendant. He appeals from the judgment below for plaintiff on the ground that the transaction was beyond the power of the corporation and that therefore the corporation is not bound by the contract. The Court of Appeals of Kentucky affirms saying that it is beyond question that a corporation may borrow money to carry on its business even though the power is not expressly granted

by its charter, that this being so it has the power to do the things reasonably necessary to enable it to borrow the money, and, here, that as between it and an innocent third party the corporation will be held bound by the act of its president within the scope of the apparent authority committed to him. Provident Stores' Receiver vs. Fanner, 10 S. W. (2d) 1077. S. W. Tolin, of Burlington, for appellant D. E. Castleman, of Erlanger, and J. L. Vest, of Walton, for appellee.

Massachusetts.

Trustees of a Massachusetts Trust may not be made parties defendant in their individual capacity in an action against them as trustees unless duly served with process as individuals. In an action against the Boston Mexican Petroleum Trustees, a Massachusetts Trust, an effort was made, successful below, "to bring into the suit the trustees in their individual capacity to show cause why their individual property should not be held by the court to be a trust fund to the extent of the indebtedness of the trust to the plaintiffs." The Supreme Judicial Court of Massachusetts (Suffolk) says: "The trustees in their individual capacity could not be made parties defendant to the bill or to the amended bill without service of process. The defendants in the original bill, sued in their official capacity, in legal intendment are not the same persons when sued in their private capacity under the amended bill." As there was no service on the trustees in their individual capacity the court dismisses the bill as to the individual defendants. Cochrane et al. vs. Forbes et al., 163 N. E. 848. J. Noble, A. P. Loring, and S. Vaughan, all of Boston, for plaintiffs. E. F. McClennen, of Boston, for defendants.

Michigan.

Unfair competition; use of individual's name. The defendant here as one of the incorporators of a corporation was instrumental in giving a name to the corporation that embodied his own name. Subsequently on divesting himself of all interest in the company he began to do business of a like nature to that engaged in by the corporation, at the old address of the latter (the corporation being forced to locate across the street), under a trade name of which his own name was a part. The Supreme Court of Michigan affirming (after modification) the restraining decree of the lower court says: "A corporation must have a name in order to function. The incorporators select or coin the name. Consent by an incorporator to the use of his name and the adoption thereof in naming the corporation gives the name a trade or business identity, and estops the dedicator from thereafter using his name in a competing trade or business." Belding's Cleaners & Dyers vs. Belding, 222 N. W. 82. Beaumont, Smith & Harris, of Detroit (Albert E. Meder, of Detroit, of counsel), for plaintiff. Miller, Canfield, Paddock & Stone, of Detroit (William J. Shaw and Joseph Jackson, both of Detroit, of counsel), for defendant.

New Jersey.

Issue of stock at par though alleged to be worth much more for purpose of giving control will not be recognized. The facts as stated are meager. The Vice-Chancellor of New Jersey says: "The shares were issued at par, although it is alleged that the actual value thereof was much greater. At the time of the hearing the real issue appeared to be an attempt to obtain control by the Kleinginna interest of the company, by obtaining a voting majority of the stock. * * * I find as a fact that said sixty-three shares of stock were illegally issued and should be canceled. I will advise a decree that upon the payment by the company to the holders of said stock, of the amount paid therefor, together with legal interest thereon—less any dividends received, said stock shall be canceled." Light et al., vs. Kleinginna, N. J. Adv. Reports, Vol. VII, No 3, p 44 Higbee & Higbee, for the complainants. Carlton Godfrey, for the defendants.

New York.

Liability in case of a forged signature on a stock certificate assignment. Here, certain parties obtained possession of unendorsed certificates of stock in a corporation "for the alleged purpose of using them as evidence on a trial in an action in Chicago." It was alleged that the certificates were subsequently fraudulently assigned to innocent third parties the signatures of the owners being forged or written in without warrant or authority. Action was brought against the corporation for wrongful transfer of the stock, the ground of the complaint being that the company had received and cancelled the certificates and issued new certificates to third persons without authority, whether by endorsement, power of attorney, or proper assignment of the certificates of stock to the new holders. A firm of brokers had guaranteed the alleged forged signatures. "The Di Giorgio Fruit Corporation apparently relied solely on the endorsements being guaranteed by G. & A. Seligman." The brokers were brought in as defendants by the company on the ground that, having guaranteed the signatures, they were thus liable over to the defendant company. Demand was made for stock, or in case it could not be delivered, the value of the stock. At the end of the case the plaintiffs elected to demand money judgment instead of the corporate stock, the value of the stock having fallen from $76 to $10. This relief was granted by the Supreme Court, New York County, Special Term. The Appellate Division, First Department, affirms the judgments below but beside stating the facts, devotes its opinion entirely to the legal and procedural questions involved in the granting of the plaintiffs' demand below for a money judgment. Donaghue, et al. vs. Di Giorgio Fruit Corporation and several named defendants co-partners doing business under the name and style of G. & A. Seligman, 225 N. Y. App. Div. 81. William C. Cannon of counsel (David E. Hudson with him on the brief; Davis, Polk, Wardwell, Gardiner & Reed) for appellant Di Giorgio Fruit Corporation. Harry R. Kohn for appellants G. & A. Seligman. Chester T. Krouse of counsel (MacLean, Krouse & MacLean) for respondents.

New York.—*Continued.*

No personal liability runs to officer of corporation signing a worthless check on behalf of the corporation. The defendant here is the treasurer of a corporation which issued its check in payment of a loan, the president and treasurer signing such check, as such, under the name of the corporation. The check was returned for insufficiency of funds, whereupon this criminal action was brought against the treasurer, as an individual, under Section 1292-a of the Penal Law, as amended by Chapter 678 of the Laws of 1927, which provides, inter alia, that any person who with intent to defraud shall make or draw or utter or deliver any check knowing at the time that there were insufficient funds for the payment of the check shall be guilty of a misdemeanor. The City Magistrate's Court of New York City holds that the treasurer could not be prosecuted as making, drawing, uttering, or delivering the check in question as all or any of such acts were the acts of the corporation. The court further holds that there is nothing in the act to indicate that when the Legislature used the word "person" in the section referred to above it intended to include within the meaning of the term, "a corporation," and that there is evidence to the contrary. People vs. Fleishman, 232 N. Y. Sup. 187. Louis Oppenheim, of New York City, for the People. Jacob W. Rozinsky, of New York City, for defendant.

Stockholders action to recover for corporation property diverted by liquidating directors. The stock of the corporation involved here was practically all owned by the named individual defendant. The action is brought, on account of the corporation, by the owner of a few of the first preferred shares. The liquidators discharged in full the liabilities and obligations of the corporation and had in hand for distribution to the stockholders a certain amount in cash, certain shares in a corporation (a party defendant, here), and a certain bond and mortgage. No prorata distribution of these assets was ever made to the stockholders but by a majority vote of the directors the cash and shares were transferred without consideration to the majority stockholder (the named defendant, here). An assignment of the bond and mortgage was made to the majority stockholder's wife for a named consideration which, however, the corporation has never received. Action is to declare the transfers nul and void as having been made in defraud of the stockholders other than the principal stockholder; for an accounting and restitution to the corporation of its property; to enjoin the principal stockholder and his wife from transferring otherwise than to the corporation any of the stock assigned to him by the corporation and part of which he had transferred to his wife, without consideration, and from voting such stock; and to enjoin the corporation whose stock was assigned to the aforesaid principal stockholder from transferring such stock on its books otherwise than to the corporation. The fact that the corporation itself is not the plaintiff is justified by the fact that the same directors who made the alleged illegal transfers are still in office and in charge of the corporation. The New York Supreme Court,

New York.—*Concluded.*

Trial Term, Albany County, sees no reason why the principal stockholder (to whom the corporation had transferred stock) and his wife (to whom he had transferred a part thereof) should not vote such stock as the plaintiff is amply protected otherwise, but denies motion of defendants for judgment on the pleadings, and continues the injunction heretofore granted after modifying it so as not to restrain the voting of the stock by the principal stockholder and his wife. Brennan vs. Barnes et al., 232 N. Y. Sup. 112. Whalen, Murphy, McNamee & Creble, of Albany (Robert E. Whalen, of Albany, of counsel), for plaintiff. Wiswall, Walton, Wood & MacAffer, of Albany (Frank L. Wiswall, of Albany, of counsel), for defendant Barnes. Joseph D. Rosch, of Albany, for defendant Cohoes American, Inc.

Location of corporation's principal place of business as stated in its certificate is conclusive on locus for dissolution proceedings. The New York Supreme Court, Appellate Division, Second Department, reviewing the order below, says: "The statute (General Corporation Law, §176) provides that the papers (in dissolution proceedings, etc.) must be presented at a Special Term of the Supreme Court held within the judicial district embracing the county wherein the principal office of the corporation is located. The principal office of the corporation is stated in the corporation's certificate to be in the Borough of Manhattan, City, County, and State of New York, and this is conclusive evidence of its residence (People ex rel. Knickerbocker Press vs. Barker, 87 Hun. 341, 34 N. Y. Sup. 269, affi'd. 147 N. Y. 715, 42 N. E. 725), unless changed pursuant to statute (Stock Corporation Law, §35, subd. C), which does not appear to have been accomplished in this proceeding." In re Capitol National Corporation, 232 N. Y. Sup. 52.

Duty of Secretary of State in connection with filing of certificate of incorporation. This is an application for a preemptory order of mandamus to require the secretary of state to file a certificate of incorporation under the Membership Corporation Law, the objects of the proposed corporation being to make loans out of the common funds of the corporation and to collect the same together with dues, assessments, and other contributions. The secretary of state had refused to file. Section 10 of the Membership Corporation Law provides for incorporating for any lawful business "except a purpose for which a corporation may be created under any general law other than this chapter." The Supreme Court, Special Term, Albany County, denies the application saying that there is interference with Section 5 of the Stock Corporation Law, that such a corporation might be formed under the Banking Law, and perhaps under the Stock Corporation Law, and that "it was the duty of the secretary of state to pass upon the question, both as to the form of the certificate and as to whether or not it was entitled to be filed under the statute (Duffus vs. Bangs, 61 Hun. 24, 15 N. Y. S. 444), and the right to file a cer-

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tificate of incorporation exists only in behalf of those who bring themselves within the terms of the act under which they seek to incorporate (People ex rel. Barney vs. Whalen, 56 Misc. Rep. 278, 106 N. Y. S. 434, aff'd. 119 App. Div. 749, 104 N. Y. 553, aff'd. 189 N. Y. 560, 82 N. Y. 1131." Bernstein et al. vs. Moses, Secretary of State, 231 N. Y. S. 669. Samuel A. Hirshowitz, of New York City, for the application. The Attorney General (George W. Davis, of Albany, of counsel), opposed.

Ohio.

Unity of knowledge ascribable to stockholders of two closely affiliated corporations. This is a banking case into the merits of which we need not go. The evidence discloses "that the stockholders of the two institutions were one and the same; that the president and first vice-president of each were the same; and that the directorates of the two were largely the same." The Supreme Court of Ohio says: "—ought not to entitle that same group of men, transacting generally the same business under the two charters and the two names, to be absolved from the obligations arising out of the knowledge imputed to them under either charter or either name. Their actual relationship to the business and to each other was not changed by the separation of the business into two entities, and was not different from that it would have been had they, the same group of men, undertaken to organize, operate, and own the First Trust & Savings Company by making the First National Bank as such, owner of all the stock of the First Trust & Savings Company; the actual group of men owning and operating the business, divorced from the fiction of corporate entity, being in either event the same." The Demascus Mfg. Co. vs. The Union Trust Co., 28 Ohio Law Reporter 297. Garfield, Cross, MacGregor, Daoust & Baldwin, and Kelley, David & Cottrell, for plaintiff in error. Stearns, Chamberlain & Royon, for defendant in error.

South Carolina.

Action by stockholders against directors of a defunct corporation for damages on account of loss suffered, solely for their own benefit. This is an action in the nature of a creditors' bill brought by plaintiffs against the directors of a defunct corporation as stockholders thereof on behalf of themselves on account of damage and loss suffered by them because of alleged mismanagement and negligence of the defendants. Reversing the order below and dismissing the complaint the Supreme Court of South Carolina finds no warrant for the bringing of such a suit by the stockholders in their own behalf and for their own benefit (rather than on behalf of the corporation and for its benefit—i. e., for the benefit of all of its creditors and of all of its stockholders) and says: "The objection to maintaining such an action as the plaintiffs have brought, for the benefit solely of the stockholders, is that recovery permitted in such a case will necessarily be among the stockholders, in derogation of the rights of general creditors and depositors [the corpo-

ration in question, here, is a bank], who, not being parties to the suit, may still bring an action against the defaulters upon the same cause of action, requiring the defaulters to respond twice for the same wrong." Gary et al. vs. Matthews et al., 145 S. E. 702. Nelson & Mullins, Herbert & Dial, Weston & Aycock, C. N. Sapp, J. L. Nettles, J. J. Earle, and T. H. Moffatt, all of Columbia, Steve C. Griffith, of Newberry, Dial & Todd, of Laurens, Butler & Hall, of Gaffney, Lide & McCandish, of Marion, and Wyatt Aiken, of Greenville, for appellants. R. T. Jaynes, of Walhalla, L. D. Jennings, of Columbia, and S. B. Craig, of Pickens, for respondents.

Foreign Corporations

Minnesota.

County in which a foreign corporation may be sued in an action against it. On a certain transitory action there are five defendants including a domesticated foreign corporation. The latter had an office in the state in Hennepin, but none in either Blue Earth or Waseca counties. Two of the remaining four defendants resided in Blue Earth county, and two in Waseca county. The action was brought in Waseca county. The Supreme Court of Minnesota says that the legislative policy indicated by Section 9214 of the Minnesota General Statutes is to subject a foreign corporation to suit in Minnesota "in any county which the plaintiff shall designate." But Section 9215, the court continues, provides that where "there are several defendants residing in different counties," there may be a change of venue on the demand of a majority of them. By an action in mandamus the foreign corporation and the two defendants residing in Blue Earth county demanded a change of venue to that county. The court says, in granting the writ of mandamus, that the only possible reason for denying the writ is on the theory that a foreign corporation is not to be considered as "residing in" any county in the state notwithstanding it may have very definitely an office or other established place of business in one or more Minnesota counties. And continues: "No concept of the law of corporations is more common than that of a corporation's presence wherever it has a definitely established agent, office, or other place of business." Oakland Motor Car Co. et al. vs. District Court of Waseca County, et al., and Fetchenhier vs. Oakland Motor Car Co. et al., 222 N. W. 524. S. Bailey Wilson, of Mankato, and Oppenheimer, Dickson, Hodgson, Brown & Donnelly, of St. Paul, for relators. Gallagher, Madden & Gallagher and Moonan & Moonan, all of Waseca, for respondents.

New York.

On "doing business" by a foreign corporation in receivership. Action is against the Central Vermont Ry. Co., a Vermont corporation, in receivership at the time the action was brought by the New York ancillary administrator of the estate of a deceased resident of Vermont

on account of his death resulting from injuries received in Vermont due to the alleged negligence of the railway. "Whether or not the Supreme Court of New York has jurisdiction of defendant and the subject matter of action is the question." The New York Supreme Court, Appellate Division, Third Department, answers the question in the affirmative in a three to two decision, those opposed believing that "the receivers were doing business, but that the defendant corporation was not." The receivers of the defendant were appointed a few weeks after the decedent's death. "It seems clear that they were appointed, not to dissolve the company, but to take possession of its property and to manage its affairs for some temporary purpose, and that they were appointed temporary receivers." Prior to the receivership and at the time of the accident the railroad was admittedly doing business in New York. The court, citing (and quoting from the first two) Kincaid vs. Dwinelle, 59 N. Y. 548, 553; Pringle vs. Woolworth, 90 N. Y. 502, 510; Decker vs. Gardner, 124 N. Y., 334, 339, 341, 26 N. E. 814, 11 L. R. A. 480, says "That the action may be maintained (against the company) seems clear." Gaboury vs. Central Vermont Ry. Co., 231 N. Y. Sup. 630. Fryer vs. Lewis, of Schenectady, for appellant. Leary & Fullerton, of Schenectady, for respondent.

Pennsylvania.

Contract entered into by unqualified corporation is not for that reason invalid and actions thereon may be maintained. It was advanced as a defense here in an action by an unqualified foreign corporation against a domestic corporation to recover for certain merchandise sold and delivered by the former to the latter that the contract was void and no right of action existed thereon since the foreign corporation vendor was not registered with the Secretary of the Commonwealth, had no office within the state, and had no authorized agent for the service of process all as provided by the constitution and laws of Pennsylvania. However the United States Circuit Court of Appeals for the Third Circuit, after referring to the statute of 1874 and to the conditions existing thereunder, quotes from the State Constitution as follows: "No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same upon whom process may be served", and from the Act of 1911 as amended by the Act of 1915, as follows: "That the failure of any such corporation to file the power of attorney and statement aforesaid, with the Secretary of the Commonwealth, shall not impair or affect the validity of any contract with such corporation, and actions and proceedings at law or in equity may be instituted and maintained on any such contract," and holds the contract valid and actionable in either the state or Federal courts. Heavy penalties are imposed for the doing of business by unqualified foreign corporations. Emporium Iron Co., Defendant-Appellant vs. Maltack Coal and Iron Co., Plaintiff-Appellee. (Not yet officially reported.)

Taxation

Canada.

Annual taxes payable by manufacturing companies in Canada by virtue of provincial legislation; on "doing business". The four paragraphs quoted below are from the January, 1929, Canadian Chartered Accountant (the official organ of the Dominion Association of Chartered Accountants, publication office, Continental Life Building, Toronto, Ontario, Canada) and precede therein tables of the tax rates in the various provinces, all having been compiled by the Legal Department of the Canadian Manufacturers Association.

"Annual taxes are imposed by every province in Canada on companies "carrying on business within the province." These taxes differ in form and amount in the different provinces and sometimes differ according to whether the company is locally incorporated, incorporated under the Dominion Companies Act or under the laws of another province or foreign country.

"In all the provinces, except New Brunswick, companies incorporated under the laws of another province or foreign country are required to be licensed or registered before 'carrying on business in the province. Companies incorporated under the Dominion Companies Act have a status and powers entitling them to carry on business throughout Canada which no provincial legislation is entitled to abrogate. But they may be required to be registered, as is the case in Saskatchewan and Nova Scotia.

"As stated, a company incorporated under the laws of a foreign country is required to be licensed or registered and pay a fee therefor in each province (except in New Brunswick) in which it carries on business through a branch establishment of any kind. Inasmuch as this involves practically as much expense as incorporating under Canadian laws, some foreign firms have preferred to incorporate in Canada and thus gain the psychological advantages which are to be obtained by operating through a corporation formed under the laws of Canada. Another reason for forming a local corporation is that Canadian profits are more easily segregated and the determination of liability for Canadian and foreign taxes, especially income taxes, is greatly facilitated.

"Taking orders for, or buying and selling goods, wares, etc., by travellers or by correspondence is not considered to be 'carrying on business,' provided that the company has no resident agent or representative, nor any office or place of business, in the province."

Federal.

Failure to pay stock transfer tax does not invalidate the transfer. Action here is against an alleged stockholder of an insolvent bank by the receiver thereof. The appellee and others had been stockholders but had sold their stock to the cashier of the bank receiving payment on delivery of the certificates, indirectly, by the bank's draft. There was no transfer of the stock on the books of the bank. There were no Federal transfer stamps on the certificates, nor were any sent with the

certificates to the bank. We touch on but one phase of the controversy covered by the following. The Circuit Court of Appeals, Seventh Circuit, says: "Appellant [the receiver] urges that, because no stamps were placed upon the certificates or upon the transfer books of the bank, as provided with the Revenue Act of 1924 there was no obligation on the bank to make the transfer. Under that act, the failure to affix stamps in no way invalidated the transactions. Cole et al. vs. Ralph, 252 U. S. 286, 293. * * * When the bank received the stock and paid for it without any demand for transfer stamps it was, under the evidence in this case, legally obligated to do everything to make the transfer effective and protect appellee." Dellert vs. Stallman, 29 F. (2d) 236. Logan Hay, of Springfield, Ill., for appellant. Ralph F. Lesemann, of East St. Louis, Ill., for appellee.

Illinois.

Franchise tax on foreign corporations held to be unconstitutional. As we stated at page 307 of THE CORPORATION JOURNAL for December, 1928, "the Illinois statutes provide (Sec. 105, of the Corporation Act) for an annual license fee or franchise tax on a qualified foreign corporation equal to 5 cents on each $100 'of the proportion of its issued capital stock, or amount to be issued at once, represented by business transacted and property located' in Illinois, such fee or tax, however, in no case to be less than would be required under the section of the statutes (Sec. 107, of the Corporation Act) providing for the imposition of a franchise tax on foreign corporations doing business in the state but having no property therein. The latter section imposes a graduated fee or tax on a bracketed sliding scale basis the amount thereof being dependent on the amount of the issued capital stock, with a maximum of $1,000 in the case of a corporation with issued capital stock in excess of $20,000,000. The plaintiff-appellant here, having a large capitalization, but doing little business in Illinois and having but a small amount of property therein would be subject to a tax for the year 1927 of $135.21 under Sec. 105, except that its tax is not to be less than as computed under Sec. 107. Under Sec. 107 its tax is $1,000 (as it is in the "excess of $2,000,000" bracket), and a tax in that amount was assessed against it." The plaintiff below questioned the validity of the statute as applied to it but the judgment of the United States District Court (27 F. (2d) 1005) went against all of its contentions and upheld the law imposing the tax. However, on review by the United States Circuit Court of Appeals, Seventh Circuit, the decree below is reversed, the court saying: "It is true the additional burden imposed by the application of section 107 does not vary with each additional share. But the additional burden imposed upon appellant and all other corporations whose minimum under section 105 is exceeded by the application of section 107 is based upon appellants' total capitalization, including property outside of the state. Such a burden the state cannot impose." St. Louis Southwestern Railway Co. vs. Louis L. Emmerson, Secretary of State for Illinois. (Not yet officially reported.)

Nebraska.

Occupation tax on foreign corporation is based on amount of its capital employed in the state, only. Section 684 of the Nebraska Compiled Statutes, 1922, provides that every foreign corporation doing business in the state shall pay an annual fee of the "same amount" as the annual fee prescribed for domestic corporations. The sliding scale fee demanded of a domestic corporation is based on the amount of its paid up capital stock. The taxing authorities have heretofore contended that in order that the legislative mandate that a foreign corporation shall pay the "same amount" as a domestic corporation, be complied with, the sliding scale fee of a foreign corporation engaged in business in Nebraska should be based on its entire paid-up capital regardless of the extent thereof that is employed in the state. The Supreme Court of Nebraska, finds ambiguity in the statute and therefore the construction of the correlated sections is necessary and that as a result of such construction consideration of Federal constitutional questions is not necessary since as the underlying thought of the fee provisions as applied to domestic corporations is that "paid-up capital" means "the amount employed in the business, which is under the protection of the laws of the state and properly subjected to taxation", the proper construction of the tax imposing section applicable to foreign corporations and particularly of the term "same amount" is that the annual fee imposed on a foreign corporation shall be based on the amount of its capital stock employed in the state, only. J. I. Case Threshing Machine Co. vs. Marsh, Secretary of State. (Filed January 24, 1929. Not yet officially reported.)

South Carolina.

What constitutes different "makes" of automobiles. Act 203 of the S. C. Acts of 1927 (35 Statutes at Large, p. 370) provides for an annual license tax on dealers in automobiles, the amount of the tax being $25 for the first make of auto-vehicle handled and $20 for each succeeding make sold. The state intepreted the word "make" to indicate cars of different styles and names though made by the same manufacturer as, here, the Reo and the Wolverine, whereas the relator appellee contended that the word "make" includes cars of different makers only, regardless of the number of cars of different names produced by any particular manufacturer. The Supreme Court of South Carolina, affirming the order below, agrees with the contention of the dealer-relator. Carolina Reo Motor Co. vs. Moorer, et al. (State Highway Commission), 146 S. W. 6. John M. Daniel, Atty. Gen. and Cordie Page and J. Ivey Humphrey, Asst.-Attys. Gen. for appellants. John E. Edens and Monteith & Monteith, of Columbia, for resp't.

Delaware Corporations Organized.

729 corporations were organized under the laws of Delaware from January 21 to February 20, as against 508 for the preceding 30-day period, and 520 for the corresponding period of one year ago.

Some Important Matters for March and April

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. The *State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Franchise Tax payable April 1, but may be paid without penalty until April 30—Domestic and Foreign Corporations.

Annual Franchise Tax Return due between January 1 and March 15—Domestic and Foreign Corporations.

ARIZONA—Annual Statement of Mining Companies due between January 1 and April 1—Domestic and Foreign Corporations engaged in mining of any kind.

COLORADO—Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

CONNECTICUT—Income Tax Return due on or before April 1—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due after April 1 and before July 1—Domestic Corporations.

Annual Return of Invested Capital and Return of Information at the source due between January 1 and March 31—Domestic and Foreign Corporations.

DOMINION OF CANADA—Annual Summary due between April 1 and June 1—Domestic companies having capital stock.

Annual Income Tax Return due between January 1 and April 30.—Domestic and Foreign Corporations.

Return of Employers and return of dividends for income tax purposes due on or before March 31—Domestic and Foreign Corporations.

GEORGIA—Registration and Payment of license tax due January 1—Delinquent April 30—Foreign corporations.

KANSAS—Annual Report and Franchise Tax due between January 1 and March 31—Domestic and Foreign Corporations.

MARYLAND—Annual Report due on or before March 15—Domestic and Foreign Corporations.

MASSACHUSETTS—Excise Tax Return due between April 1 and April 10—Domestic and Foreign Corporations.

MISSISSIPPI—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MISSOURI—Annual Return of Net Income due on or before March 15—Domestic and Foreign Corporations.

MONTANA—Annual Report due in April or May—Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15—Foreign Corporations.

NEW JERSEY—Annual Tax Return due on or before first Tuesday of May—Domestic Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1—Domestic and Foreign Corporations.

Franchise tax due on or before April 1—Domestic Corporations.

NEW YORK—Annual Franchise Tax payable on or before March 15—Domestic and Foreign Real Estate and Holding Corporations, Transportation and Transmission Companies, other than those subject to the so-called income tax.

Annual Return of Withholding Agent due on or before April 15—Domestic and Foreign Corporations.

NORTH CAROLINA—Income Tax Return and return of information due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Annual Income Tax Return due on or before March 15—Domestic and Foreign Corporations.

OHIO—Annual Report due between January 1 and March 31—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock Report due on or before March 15—Domestic and Foreign Corporations.

Corporate Loan Report due on or before March 15—Domestic and Foreign Corporations.

Bonus Report due on or before March 15—Foreign Corporations.

QUEBEC—Sworn Statement for Treasury Department due on or before May 1—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Income Tax Return due on or before March 15—Domestic and Foreign Corporations.

TENNESSEE—Annual Return of Supplemental Information due between January 10 and March 15—Domestic and Foreign Corporations.

Annual Excise Tax Report due on or before May 1—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax Report due between first day of January and the fifteenth day of March.

Annual Franchise Tax due on or before May 1—Domestic and Foreign Corporations.

UNITED STATES—Annual Return of Net Income due on or before March 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

Return of Information of dividend payments due on or before March 15—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VERMONT—Extension of Certificate of Authority due on or before April 1—Foreign Corporations.

List of Stockholders due on or before April 5—Domestic and Foreign Corporations.

WEST VIRGINIA—Annual Report due in April—Foreign Corporations.

WISCONSIN—Annual Report due between January 1 and April 1—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Some Legal Questions in Relation to Investment Trusts. A discussion of their validity, taxability, distinction between "trust" and "association," with citations of leading court decisions and decisions of the U. S. Board of Tax Appeals, and their treatment under the New York State Income, Inheritance and Stock Transfer Taxes.

What Constitutes Doing Business. (Revised to July, 1928). A pamphlet containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Certificate of Incorporation of Pullman Incorporated. Pullman Incorporated was the first internationally known corporation to take advantage of the new features of the Delaware law as amended in 1927, and its charter will therefore be of great interest to lawyers.

Safeguarding Stock Transfers. Dealing with the many pitfalls in transferring stock on a corporation's books.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation. Revised to November, 1928.

Special Reports. When cases are decided that seem to be of some particular interest or significance in connection with the matter of doing business by foreign corporations, The Corporation Trust Company sometimes issues one of these special reports. One on the Southwest Company case is now available.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfers are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.